

Rule 402. General Admissibility of Relevant Evidence.

Relevant evidence is admissible unless any of the following provides otherwise:

- . the United States or Arizona Constitution;
- . an applicable statute;
- . these rules; or
- . other rules prescribed by the Supreme Court.

Irrelevant evidence is not admissible.

Comment to 2012 Amendment

The language of Rule 402 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Cases

402.010 All relevant evidence is admissible unless a constitutional provision, statute, or rule precludes its admission.

Hayes v. Gama (Hayes), 205 Ariz. 99, 67 P.3d 695, ¶¶ 21–23 (2003) (in child custody dispute, mother violated trial court’s order and had daughter seen by therapeutic counselor other than one ordered by trial court; as sanction, trial court excluded testimony and notes of therapeutic counselor; court noted that A.R.S. § 25–403(A) provided that “court shall consider all relevant factors,” held that notes and testimony were relevant evidence, and thus held that trial court erred in imposing sanction that would preclude the consideration of relevant evidence).

402.015 Evidence that is not relevant is not admissible.

State v. Huerstel, 206 Ariz. 93, 75 P.3d 698, ¶¶ 71–73 (2003) (at trial, defendant contended he confessed because he feared reprisals from his codefendant; trial court allowed state to impeach that testimony with fact that, at suppression hearing, defendant contended only that officers’ actions made his statements involuntary and never mentioned anything about codefendant; court held that, because codefendant was not in any way connected with state, what codefendant did to defendant was irrelevant to issue of voluntariness, so trial court erred in allowing state to impeach defendant’s trial testimony with his testimony given at suppression hearing).

State v. Dann, 205 Ariz. 557, 74 P.3d 231, ¶¶ 37–39 (2003) (defendant sought to introduce evidence of drugs in victims’ systems in order to discredit medical examiner’s testimony about how quickly victims died; because medical examiner testified that drugs in system probably did not make substantial difference in time it took victims to die, evidence of drugs in victims’ systems was not relevant, thus trial court did not abuse discretion in excluding this evidence).

402.017 If a contract contains a written expression of the parties’ intent that the contract represents a complete and final agreement between them (integration clause), then parol evidence rule renders inadmissible any evidence of any prior or contemporaneous oral understandings and any prior written understandings that would contradict, vary, or add to the written contract.

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- * *Best v. Miranda*, 229 Ariz. 246, 274 P.3d 516, ¶ 11 (Ct. App. 2012) (plaintiff claimed he exercised option to purchase real property, and contended trial court erred in failing to consider evidence of parties' oral agreement of what would be sufficient to exercise option; court held evidence of any oral agreement would be inadmissible under statute of frauds).

Aztar Corp. v. U.S. Fire Ins. Co., 223 Ariz. 463, 224 P.3d 960, ¶¶ 49–52 (Ct. App. 2010) (in 2002, plaintiff began construction on building expansion; on October 30, 2003, six floors of expansion collapsed, causing 7-month delay in utilizing expansion; contract provided expansion would be endorsed onto insurance policy effective April 1, 2004; plaintiff contended expansion was covered property throughout construction and that April 1, 2004, date referred to date when estimated value of expansion would be added to policy; plaintiff argued extrinsic evidence showed it purchased coverage for loss caused by expansion, specifically deposition testimony that risk manager and insurance broker intended expansion to be covered under policy; court held language of policy was clear: The expansion would be endorsed onto the policy (and consequently become covered property) on April 1, 2004, which meant it was not covered property before April 1, 2004, thus parol evidence rule barred admission of extrinsic evidence that would vary or contradict terms of written contract).

402.065 Arizona Supreme Court does not have the authority to delegate to the Administrative Director the authority to make rules on the admissibility of evidence.

In re Jonah T., 196 Ariz. 204, 994 P.2d 1019, ¶¶ 9–21 (Ct. App. 1999) (Arizona Supreme Court adopted Administrative Order 95–20, which authorized the Administrative Director of the Court to distribute certain policies and procedures for drug testing; the procedure adopted provided that if an immuno-assay test showed that a juvenile tested positive for drugs but the juvenile denied using drugs, those test results were not admissible unless the positive result was confirmed by a subsequent gas chromatography/mass spectrometry test; court held the administrative procedure conflicted with the Rules of Evidence, and that the administrative procedure could not negate the applicable Rule of Evidence).

402.070 The Arizona Legislature is permitted to enact statutory procedural rules that are reasonable and workable and that supplement the rules promulgated by the Arizona Supreme Court.

David G. v. Pollard, 207 Ariz. 308, 86 P.3d 364, ¶¶ 15–17 (2004) (court held that A.R.S. § 8–323, which sets forth procedure for adjudicating certain offenses listed in A.R.S. § 8–323(B), supplements and does not conflict with Arizona Rules of Juvenile Procedure).

State v. Vincent, 159 Ariz. 418, 768 P.2d 150 (1989) (A.R.S. § 13–4253, which allows for the presentation of videotaped testimony, is constitutional and admission of such testimony is permissible as long as the trial court makes the necessary findings).

Jilly v. Rayes (Carter), 221 Ariz. 40, 209 P.3d 176, ¶¶ 1–8 (Ct. App. 2009) (court held that A.R.S. § 12–2603, which provides that plaintiff suing health care professional must certify whether or not expert opinion testimony is necessary to prove health care professional's standard of care or liability, and if expert opinion testimony is necessary, requires service of "preliminary expert opinion affidavit" with initial disclosures, did not conflict with any court rule, and thus was constitutional).

RELEVANCY AND ITS LIMITS

Bertleson v. Tierney, 204 Ariz. 124, 60 P.3d 703, ¶¶ 20–22 (Ct. App. 2002) (A.R.S. § 12–2602, which deals with notice whether expert testimony will be necessary in claim against licensed professional supplements existing procedural rules and is reasonable and workable, and therefore constitutional).

State v. Gilfillan, 196 Ariz. 396, 998 P.2d 1069, ¶¶ 17–28 (Ct. App. 2000) (court held A.R.S. § 13–1421, which prescribes when sexual assault victim’s prior sexual conduct may be admitted in evidence, was reasonable and workable supplement to court’s procedural rules and thus was permissible statutory rule of procedure).

Martin v. Reinstein, 195 Ariz. 293, 987 P.2d 779, ¶¶ 104–07 (Ct. App. 1999) (Arizona’s Sexually Violent Persons Act provides that Arizona Rules of Evidence apply to proceedings; court held this was reasonable and workable and supplemented rules promulgated by Arizona Supreme Court, and thus was permissible).

In re Maricopa Cty. Juv. No. JD–6123, 191 Ariz. 384, 956 P.2d 511 (Ct. App. 1997) (Juvenile Rule 16.1(f) is a reasonable and workable supplement to the Arizona Rules of Evidence).

State v. Nihiser, 191 Ariz. 199, 953 P.2d 1252 (Ct. App. 1997) (A.R.S. § 28–692(F), which provides method for establishing foundation for breath test results, is a reasonable and workable supplement to the rules).

402.075 Although the Arizona Legislature is permitted to enact statutory rules that are reasonable and workable and that supplement the rules promulgated by the Arizona Supreme Court, when a conflict arises, or a statutory rule tends to engulf a rule that the court has promulgated, the court rule will prevail.

Lear v. Fields, 226 Ariz. 226, 245 P.3d 911, ¶¶ 14–22 (Ct. App. 2011) (A.R.S. § 12–2203 (Arizona *Daubert*) does not alter any substantive law, but instead is attempt to control admissibility of expert witness testimony in all cases and such controls procedural matters; because it conflicts with existing rules of evidence, it is unconstitutional).

State v. Taylor, 196 Ariz. 584, 2 P.3d 674, ¶¶ 4–11 (Ct. App. 1999) (A.R.S. § 13–4254 allows for admission of pretrial videotaped statement made by minor, this statute is both more restrictive and less restrictive than existing hearsay exceptions, and so it engulfs Rules of Evidence and is therefore unconstitutional).

402.077 Although a statute may have the effect of precluding certain evidence and may appear to be in conflict with a court rule, if the statute in question controls a matter of substantive law, then the statute will prevail over the court rule.

** *Baker v. University Physicians Health*, ___ Ariz. ___, 296 P.3d 42, ¶ 52 (2013) (court declines to reconsider holding in *Seisinger*).

Seisinger v. Siebel, 220 Ariz. 85, 203 P.3d 483, ¶¶ 22–44 (2009) (defendant moved to preclude testimony of plaintiff’s expert witness; trial court ruled that plaintiff’s expert witness did not meet requirements of A.R.S. § 12–2604, which provides additional qualifications for expert witness in medical malpractice actions, and granted defendant’s motion; court held that A.R.S. § 12–2604 set forth what was required for plaintiff to meet burden of proof in medical malpractice case and thus was matter of substantive law, which meant statute would prevail over contrary court rule).

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* = 2012 Case

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